

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4389 OF 2004

Smt. Ansari Fahmida Bano Anees Ahmed ..Petitioners.
and Anr.

Versus

Smt.Quraishi Rukhsana Afsar Husain
and Ors. ..Respondents.

Mr. Sachin V. Dhakephalkar for the Petitioners.

CORAM : S. A. BOBDE, J.

DATED : 28TH SEPTEMBER, 2005.

P.C.:

1. By this petition, the petitioners have challenged the judgment and order of the Civil Judge, Sr.Dvn., Thane, rejecting their election petition. The petitioners have challenged the election of the respondent No.1 as a corporater of Bhiwandi Municipal Corporation. This petition was filed under section 16 of the B.P.M.C. Act. The petitioner No.1 lost by a margins of 11 votes; petitioner No.2 lost by a

margin of 278 votes and petitioner No.3 lost by a margin of 708 votes. The learned Civil Judge has framed following issues :-

Issues	Findings
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1. It is proved that mischief and malpractice was played and Respondents Nos.1, 4 and 12 were declared by manipulating votes as alleged ?	Negative.
2. Is the petitioner entitled for the relief claimed ?	Negative.
3. What order and decree ?	Petition is dismissed.

2. The main contention of the petitioners was that there was no electricity in the counting hall for a period of about 15 minutes and during that time the Returning Officer committed mischief by exchanging counted ballot papers with uncounted ballot papers. The Election Court has found that the counting agents

of the petitioners were present on each table and the ballot papers of each candidate were kept in a separate baskets. In particular, the court has taken cognizance of the petitioners' allegation that they only suspect that the Returning Officer had committed the mischief. The court has also rejected the petitioners' contention that mischief should be inferred since the petitioners were leading against the respondents in the first round, but thereafter, this trend was changed due to some mischief after the lights went off.

3. In paragraph-11, the court has come to the conclusion that there is no evidence to show that there was improper reception or rejection of the votes nor any objection was raised at the time of the counting of votes. Relying on the decision of the Supreme Court in AIR 1975 S.C. 2117, the court has rejected the petitioners' election petition.

4. Having gone through the order, it is clear that the impugned judgment is passed on the facts found, particularly on the absence of any evidence regarding the alleged mischief having been played by the Returning Officer, who was merely suspected by the

petitioners. Indeed an election cannot be set aside on surmises and suspicion. The facts found are against the petitioners. It is settled law that until and unless any perversity is shown or an error of law on the face of the order is demonstrated, this court will not interfere with findings of fact. There is no infirmity, jurisdictional or otherwise in the impugned order.

5. The petition is, therefore, dismissed.

Dt.28.09.2005

(S.A.BOBDE, J)

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